

1 JUDGE SIPPEL: Okay? I mean, I think we know
2 where we are coming from.

3 Now, the other thing that I -- the last thing that
4 I want to say is that I know that you have got a deadline
5 for the 16th of August. And I know people also have other
6 lives to live. If this is going to become a problem with
7 the August 16th date, I am expecting that all counsel here
8 are going to agree to some kind of a reasonable period of
9 time when you are going to have to come in with your
10 opposition.

11 I am not talking about months now. I am talking
12 about, you know, another week or 10 days, whatever it might
13 take.

14 MR. BEGLEITER: We will be reasonable, Your Honor.

15 MR. BECKNER: Your Honor, the only -- I mean, at
16 this point I am not going to ask for an extension because I
17 don't know if I am going to need one.

18 JUDGE SIPPEL: No, you don't know yet.

19 MR. BECKNER: The only thing that I would ask for
20 is, you know, as soon as we can get these folks scheduled
21 for deposition, in fact, that certainly would help.

22 MR. BEGLEITER: We would certainly like to try to
23 do this.

24 MR. SPITZER: We agree entirely.

25 JUDGE SIPPEL: They are going to cooperate with

1 you.

2 MR. BECKNER: If it's easier -- if it's easier if
3 I go to New York, I will go to New York. Of course, I don't
4 know the Bureau, that doesn't help you guys, does it? I'm
5 sorry. I withdraw that.

6 JUDGE SIPPEL: Let me ask this. Now, you have
7 been through this. I don't want to take too much more of
8 your time, but you have been through this procedurally, that
9 is, in terms of how things were doing. You have been
10 through this with Mr. Lehmkuhl, right? You don't need Mr.
11 Lehmkuhl to establish foundation work in terms of how this
12 all is done.

13 MR. BECKNER: I mean, assuming that, and I haven't
14 heard Liberty say otherwise, assuming that Liberty is not
15 going to dispute the authenticity of the document, and they
16 are not going to dispute that the document was at least
17 placed in the mail to the named addressees.

18 JUDGE SIPPEL: No, I'm not talking about that. I
19 mean in terms of -- I am sure you have gone down the
20 question with Mr. Lehmkuhl as how did he operate in terms
21 of, you know, communicating with Liberty about things and
22 stuff.

23 MR. BECKNER: I mean, I -- the only --

24 JUDGE SIPPEL: Okay.

25 MR. BECKNER: If I want to have Lehmkuhl, I will

1 come and ask for him, and I will have a good reason for
2 asking for him. But right now I don't have a reason to ask
3 for Lehmkuhl that I can see.

4 JUDGE SIPPEL: Okay.

5 MR. WEBER: Your Honor?

6 JUDGE SIPPEL: Yes, Mr. Weber.

7 MR. WEBER: The Bureau may be interested in
8 speaking to Mr. Lehmkuhl again, albeit briefly, at least to
9 find out whether or not he had any follow-up discussions
10 with either Mr. Price or Mr. Nourain regarding the memo. I
11 mean, we now have affidavits from both Mr. Price and Mr.
12 Nourain stating that they -- that they didn't pay any
13 attention to the memo or they didn't read it. But we could
14 find out from Mr. Lehmkuhl whether there were any
15 discussions with him regarding the memo.

16 MR. SPITZER: We have no opposition, Your Honor.

17 JUDGE SIPPEL: All right. Well, you could -- all
18 right.

19 MR. WEBER: And then questions along that same
20 line.

21 MR. BEGLEITER: As long as it doesn't involve
22 privileged communications.

23 MR. WEBER: Well, I mean, I understand that if he
24 does answer, yes, I talked to them about the memo, we can't
25 do the next question, well, what did you say. But we can at

1 least get whether or not there were follow-up discussions.

2 JUDGE SIPPEL: All right. I will tell you what I
3 am going to do, then. That's fine. I am going to leave it
4 open, but definitely Mr. Nourain and Mr. Price, with the
5 option on the Bureau's part to call Mr. Lehmkuhl back for
6 these limited purposes.

7 And I am going to give you -- I am going to give
8 you 10 more days to get your opposition in so that you can
9 put that -- now, if you need --

10 MR. BEGLEITER: Your Honor. If I may, Your Honor,
11 that happens to be the day that both Mr. Spitzer and myself
12 are going to be on vacation. We are both kind of taking the
13 last week of August off. Actually, I am also taking the
14 first week in September off.

15 The point I am making is I know we have no right
16 to a reply, but in case there was some -- I believe we have
17 no right to a reply. Maybe I am misreading the rules, but I
18 believe we have no right to a reply.

19 JUDGE SIPPEL: No, you have no right to a reply,
20 and I am not that fast that you are not going to have a
21 chance to come back and say that there is something that you
22 need extraordinarily relief for.

23 MR. BEGLEITER: And I won't be back in the city,
24 in my office until September 9th. So I would even say if
25 Mr. Beckner needs a few more days. I will be generous on

1 that end.

2 MR. BECKNER: Bob, you mean I am going to get to
3 take my vacation after all?

4 MR. BEGLEITER: If I knew your vacation was going
5 to be --

6 MR. BECKNER: It's late August.

7 MR. BEGLEITER: Well, fine, if you need --

8 JUDGE SIPPEL: Why don't you come in with it, say
9 Tuesday or Wednesday after Labor day. I hate to say Tuesday
10 because it's the day after Labor Day. Why don't we make it
11 on Wednesday?

12 Does the Bureau have any objection to this?

13 MR. WEBER: Certainly not.

14 JUDGE SIPPEL: Let me just write this down. We
15 can agree on a few things.

16 Again, now, you know, I just want to emphasize
17 that I want cooperation at these depositions, and based on
18 past experience I am sure it's going to happen that way.
19 And I think that's -- that's it.

20 Oh, wait a minute, before I sign off on this, the
21 motion to enlarge the issues, it just seems at this point
22 that you would be almost wasting your time to file a
23 responsive pleading to that.

24 MR. BECKNER: I was going to suggest if --

25 JUDGE SIPPEL: Let's just leave it.

1 MR. BECKNER: If your order simply, the written
2 order that simply reflects the -- perhaps the agreement that
3 the designated issues include the matters addressed in the
4 motion, then that certainly disposes of it.

5 Am I right there?

6 JUDGE SIPPEL: Well, I am not sure how far the
7 Bureau wants to go in that respect. But I think what I am
8 going to do procedurally is I am just going to leave it the
9 way it is, and I will -- procedurally I will resolve it when
10 we get to the motion for summary decision. I don't see any
11 reason why you should file a reply to that. I am not going
12 to act on that.

13 MR. BECKNER: Okay, that's fine.

14 JUDGE SIPPEL: We have other things to do, and I
15 think now we have gotten to the heart of the matter, and I
16 don't see why it has to be --

17 MR. BECKNER: I mean, I think Your Honor stated in
18 here that your view is that misrepresentations or candor in
19 the proceeding itself are always --

20 JUDGE SIPPEL: They are always here.

21 MR. BECKNER: -- an issue.

22 JUDGE SIPPEL: And that's serious stuff.

23 MR. BECKNER: And that's the only additional thing
24 that we sought to raise by our motion.

25 JUDGE SIPPEL: Well, then, what I will do, I will

1 tell you what I am going to do, I am going to deny the
2 motion then. I am going to deny both motions, and the case
3 can carry on as we have outlined it here today.

4 MR. BECKNER: All right.

5 JUDGE SIPPEL: All right. Then that's it. We are
6 in -- then we are in recess. Thank you, very much.

7 MR. WEBER: One final question, whether or not any
8 type of time frame is going to be, or time limitations are
9 going to be set for taking of the deposition.

10 JUDGE SIPPEL: Well, I don't see how, unless you
11 want to work out a schedule and present it to me tomorrow,
12 that's fine. I will be here tomorrow and I can act on that.
13 If that can be done, I would like to see that. But I am
14 relying upon -- I am not going to set the days down because
15 you all have to check with Mr. Price and Mr. Nourain and
16 find out when they are going to be available.

17 MR. BEGLEITER: Barring unforeseen circumstances
18 such as their being out of town, we intend to get this done
19 next week, which I think is fair.

20 JUDGE SIPPEL: All right. I would rather -- can I
21 put it down that I -- I can put down in my order that they
22 will be completed within -- give you a two-week time frame?

23 MR. BEGLEITER: That's fine.

24 MR. BECKNER: That's fine, Your Honor.

25 JUDGE SIPPEL: All right, then, that's what I will

1 do. Is that good enough? And then the rest of it is all up
2 to you, whether you do it in New York or wherever, how you
3 do it.

4 Does that answer everybody's concerns or
5 questions?

6 All set?

7 We are in recess. Thank you, gentlemen.

8 (Whereupon, at 4:55 p.m., the prehearing
9 conference was recessed.)

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REPORTER'S CERTIFICATE

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I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.

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